

DEPARTMENT OF HUMAN SERVICES

Repeal of Section 17-402-17 and Adoption of Chapter
17-403

Hawaii Administrative Rules
October 4, 2010

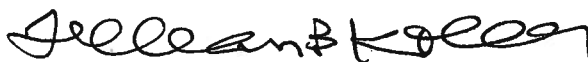
SUMMARY

1. Section 17-402-17 is repealed.
2. Chapter 17-403 is adopted.

DEPARTMENT OF HUMAN SERVICES

Chapter 17-403, Hawaii Administrative Rules, on the Summary Page dated October 4, 2010, was adopted on October 4, 2010 following a public hearing held on August 17, 2010, after public notice was published by Honolulu Star Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and the Garden Island on July 17, 2010.

The adoption of chapter 17-403 shall take effect ten days after filing with the Office of the Lieutenant Governor



LILLIAN B. KOLLER, DIRECTOR
Department of Human Services

APPROVED:



Linda Lingle
Governor
State of Hawaii

Dated: 11/1/10

APPROVED AS TO FORM:



Deputy Attorney General

Filed

DEPARTMENT OF HUMAN SERVICES

Adoption of Chapter 17-403

Hawaii Administrative Rules

1. Chapter 403 of Title 17, Hawaii
Administrative Rules, entitled "Vending Facilities
Program" is adopted to read as follows: _____

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of Section 91-4-1, Hawaii Revised Statutes, which were adopted on October 4, 2010, and filed with the Office of the Lieutenant Governor.



LILLIAN B. KOLLER, DIRECTOR
Department of Human Services

APPROVED AS TO FORM:



Deputy Attorney General

"HAWAI'I ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 4

DIVISION OF VOCATIONAL REHABILITATION AND SERVICES FOR
THE BLIND, SERVICES FOR THE BLIND BRANCH

CHAPTER 403

VENDING FACILITIES PROGRAM

Subchapter 1 Overview and Program Administration

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- \$17-403-2 Applicable definitions
- \$17-403-3 Administration of the program
- \$17-403-4 Nondiscrimination
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Subchapter 2 Training, Appointment, Licensing, and
Due Process

- \$17-403-8 Evaluation and training
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licensed vendors
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- \$17-403-11 Issuance of licenses
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- \$17-403-15 Licensed Vendors' Right to Full
Evidentiary Hearing
- \$\$17-403-16 to 17-403-18 (Reserved)

who are blind to meet the requirements for management of vending facilities in State, city and county buildings, and Federal or other property, for those individuals to become independent operators of vending and food service facilities, by providing training in management skills, food service and sanitation laws, and business systems, and to establish vending facilities and cafeterias in State, city and county buildings, and Federal or other property, and to render ongoing consultation and management assistance to blind vendors.

(b) The purpose of these rules is to assure the effective conduct of the vending facilities program and the operation of each vending facility in accordance with 20 U.S.C. sections 107 through 107(f), 34 C.F.R. sections 395.1 through 395.38, and sections 102-14 and 347-12.5, HRS. [Eff ; am and
comp **NOV 1 8 2010**] (Auth: HRS § 102-14) (Imp. 20
U.S.C. §§ 107 through 107(f), 34 C.F.R. sections 395.1
through 395.38, HRS §§ 102-14, 347-12.5)

\$17-403-2 Applicable definitions. As used in this chapter:

"Act" means the Randolph-Sheppard Act (Pub. L. 74-732), as amended by Pub. L. 83-565 and Pub. L. 93-516, 20 U.S.C., ch. 6A, section 107.

"Active participation" means a joint decision-making process between the Hawai'i State Committee of Blind Vendors (HSCBV) and the State Licensing Agency (SLA or Ho'opono) with respect to the following categories:

- (1) major administrative, policy, or program development decisions affecting the overall administration of the vending facility program;
- (2) development and administration of a system for the transfer and promotion of blind vendors;
- (3) development of training and retraining programs for blind vendors;

- (4) sponsorship, with Ho'opono's assistance, of meetings and instructional conferences for Hawai'i's blind vendors;
- (5) significant expenditures (as determined by the SLA in consultation with the HSCBV chair) from the Randolph-Sheppard Revolving Account established pursuant to section 347-12.5, HRS (RSRA);
- (6) changes in facility composition, as well as adding or closing of facilities;
- (7) selection of vending facility staff and consultants.

"Authority" means the state, county, or city agency or department responsible for management of a state, county, or city building.

"Blind person" means a person who, after examination by a physician skilled in diseases of the eye or by an optometrist, whichever the person shall select, has been determined to have:

- (1) Not more than 20/200 central visual acuity in the better eye with correcting lenses; or
- (2) An equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

"Direct competition" means the presence and operation of a vending machine or vending facility on the same premises as a vending facility operated by a blind vendor, except that vending machines or vending facilities operated in areas serving employees the majority of whom normally do not have direct access (in terms of uninterrupted ease of approach and the amount of time required to patronize the vending facility) to the vending facility operated by a blind vendor shall not be considered to be in direct competition with the vending facility operated by a blind vendor.

"Equipment" means:

- (1) Counters, shelving, display and wall cases, refrigeration apparatus and other appropriate equipment necessary for the purpose of

establishing persons who are blind in gainful employment pursuant to the Act or section 102-14, HRS;

- (2) Cafeteria or snack bar facilities for the dispensing of foodstuff and beverages; and
- (3) Manual, coin, or bill, bank, or card operated vending machines.

"Federal property" is as is defined in 34 C.F.R. § 395.1.

"Hawai'i State Committee of Blind Vendors" or "HSCBV" means the state committee elected by vendors to actively participate with the SLA in the administration of the vending facility program.

"Initial stock and supplies" means merchandise, expendable stock, supplies, and operating capital which is purchased with vocational rehabilitation funds or funds deposited into the RSRA for the purpose of establishing a vending facility pursuant to this chapter.

"License" means a written instrument issued by the SLA to a person who is blind, pursuant to the Act, authorizing such person to operate a vending facility on federal or other property.

"Maintenance of equipment" means all the repairs necessary to keep the equipment operational. For example, this could include the purchase of a new motor for a refrigerator or the replacement of glass in a showcase. Refurbishment such as finishing and painting counters, shelving, and the like also is considered to be maintenance. However, replacement of filters and the like, so long as such tasks can be safely accomplished by the blind vendor or the trainee, or such tasks do not fiscally overburden the facility, is not considered to be maintenance of equipment.

"Management services" means supervision, inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided on a systematic basis to support and improve vending facilities operated by blind vendors, including equipment and initial stock as provided by 20 U.S.C. § 107b(2). Management services does not

include those services or costs which pertain to the ongoing operation of an individual facility after the initial establishment period.

"Other property" means property which is not Federal property and on which vending facilities are established or operated.

"Permit" means the permit required by HRS § 102-14(c).

"Replacement of equipment" means the total replacement of a single piece of equipment as a unit; for example, the purchase of a new refrigerator. A number of units of equipment for a single stand location may be purchased as replacement equipment at one time. A portion or a part of a piece of equipment; i.e., a refrigerator motor, may not be considered as replacement equipment but must be charged as maintenance and repair. Counters may be replaced in total, but the installation of a new glass or refinishing of surfaces should be considered maintenance and repair.

"Randolph-Sheppard Revolving Account" or "RSRA" is the account established pursuant to section 347-12.5, HRS.

"Satisfactory site" means an area fully accessible to a sufficient number of vending facility patrons to ensure the facility will contribute to the economic opportunity of an individual or individuals who are blind or visually impaired as determined by the SLA and having adequate space to ensure that patrons are adequately served:

- (1) A minimum of 250 square feet available for vending and a minimum of 150 square feet available for storage of articles necessary for the operation of a vending facility; and
- (2) Sufficient electrical, plumbing, heating, air conditioning, and ventilation outlets for the location and operation of a vending facility in accordance with applicable health laws and building codes.

"Secretary" means the secretary of the U.S. department of education.

"State licensing agency" or "SLA" mean the department of human services as the state agency designated by the Secretary under the Act, to issue licenses to blind persons for the operation of vending facilities on Federal and other property, and to issue licenses to persons who are blind for the operation of vending facilities in State, city or county buildings under section 102-14, HRS.

"State vocational rehabilitation agency" means that agency in the State providing vocational rehabilitation services to the blind as the sole state agency under a State plan for vocational rehabilitation services approved pursuant to the provisions of the Rehabilitation Act of 1973, as amended (29 U.S.C., chapter 16).

"Vending facility" means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by blind vendors and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending or exchange of chances for any lottery authorized by state law and conducted by an agency of a state within such state. Vending facility also includes any other facility established by the SLA and operated by a blind vendor.

"Vending machine" means a manual, coin, currency, bank credit or debit card operated machine which dispenses articles or services, except that those machines operated by the United States Postal Service for the sale of postage stamps or other postal products and services, machines providing services of a recreational nature, and telephones shall not be considered to be vending machines.

"Vending machine income" means receipts (other than those of a blind vendor) from vending machine operations on Federal property, or in State, city or county buildings, after deducting the costs of goods

sold (including reasonable service and maintenance costs in accordance with customary business practices of commercial vending concerns), where the machines are operated, serviced, or maintained by, or with the approval of, a department, agency, or instrumentality of the United States, State, city or county, or commissions paid (other than to a blind vendor) by a commercial vending concern which operates, services, and maintains vending machines on Federal, State, city or county property for, or with the approval of, a department, agency, or instrumentality of the United States, State, city or county.

"Vendor" means a blind licensee who is operating a vending facility on Federal or other property under the Act, or in a State, city or county building under section 102-14, HRS and this chapter.

"Visually impaired person" means a person who has some visual impairment—not to the extent that the individual can claim special tax exemptions as a legally blind person—but to the extent that the visual impairment seriously interferes with achievement of the person's maximum social, educational, and economic potential.

"Vocational Rehabilitation Services" or "VR Services" means those services defined in section 103 of the Rehabilitation Act of 1973, as amended, and 34 C.F.R., chapter 361 C.F.R. §395.1. [Eff. 132000 am and comp] (Auth: HRS § 102-14) (Imp. 20 U.S.C. §§ 107 through 107(f), 34 C.F.R. sections 395.1 through 395.38, HRS § 102-14, 347-12.5)

§17-403-3 Administration of the program. (a) The vending facilities program shall be administered by the services for the blind branch of the vocational rehabilitation and services for the blind division, of the State department of human services, as the SLA designated by the Secretary.

(b) The program shall be administered in accordance with the Act, Federal regulations, applicable State statutes and this chapter. [Eff. 132000 am and comp NOV 13 2010] (Auth: HRS § 102-14) (Imp. 20

U.S.C. §§ 107a, 107b, 34 C.F.R. section 395.2, HRS § 102-14, 347-12.5)

§17-403-4 Nondiscrimination. The vending facilities program shall be administered without regard to gender (sex), age, physical or mental impairment, creed, color, national origin, religion or political affiliation and in accordance with the provisions of the Civil Rights Act of 1991. [Eff ; am and comp] (Auth: 41 C.F.R. 101-6.206) (Imp. 41 C.F.R. 101-6.206)

§§17-403-5 to 17-403-7 (Reserved)

SUBCHAPTER 2

TRAINING, APPOINTMENT, LICENSING, AND DUE PROCESS

§17-403-8 Evaluation and training. (a) Any person who is blind and eligible for vocational rehabilitation services under chapter 17-401.1, Hawaii Administrative Rules, shall be informed of the vending facilities program and the availability of training in all aspects of vending facility operation, upward mobility training for all blind licensees, and post-employment services for blind vendors as vocational rehabilitation services.

(b) The goal of the training program is to provide training adequate for participants to attain and sustain successful businesses. Instructors and mentors shall take into consideration trainees' prior education and experience and shall ensure that instruction is trainee-friendly.

(c) Evaluation of blind individuals for the vending facilities program shall be conducted by VR Services in consultation with the vending facilities program. Evaluation criteria shall include, but is not limited to, whether the individual:

- (1) Is legally blind;
 - (2) Is a citizen of the United States;
 - (3) Demonstrates to the State Licensing Agency (SLA) an ability to operate a vending facility, including but not limited to the ability to make business decisions, to attain at least average proficiency in computational mathematics, and to maintain good interpersonal relationships with customers and building authorities;
 - (4) Has a basic understanding of the vending facilities program, process, and training requirements;
 - (5) Is interested in participating in the training program and becoming a vendor; and
 - (6) Other criteria that would indicate suitability for the vending facilities program.
- (d) The following are grounds for automatic expulsion from the training program:
- (1) Use of alcoholic beverages or other chemical substances not prescribed by a medical doctor while in a training setting or coming to training under the influence of such substances;
 - (2) Abusive language, cursing, racial or sexual slurs, or failure to respond to the SLA's or a mentor's reasonable request related to the training program; and
 - (3) Theft of property or funds from the SLA, a vendor, or a member of the public.
- (e) Training in all aspects of vending facility operation shall be available for persons who are blind who meet the above evaluation criteria.
- (f) Training shall include:
- (1) Basic training - What vending is all about, the functional areas of operating a vending facility, including but not limited to merchandising, sanitation and safety, licenses and taxes, customer service, product

- mix, rotation and accessibility, signage and lighting, public relations, record keeping, including inventory and profit and loss report and analysis, cashiering and banking, marketing (including advertising and pricing), care of perishable and non-perishable products, personal appearance and hygiene, specialized topics needed or required by type of vending facility, and financial management;
- (2) Satisfactory completion of a minimum of 100 hours of on-the-job training for those individuals with similar work experience, and such other on-the-job training as determined by the SLA ;
 - (3) In-service training (placement in a vending facility) for a six month period;
 - (4) Upward mobility training, including further education and additional training or retraining for improved work opportunities; and
 - (5) Overview of the Act and sections 102-14 and 347-12.5, HRS, and these rules.
 - (6) On-the job training may include mentoring, which may be provided by a licensed vendor (who will periodically evaluate the trainee's progress, and report to the SLA)
 - (A) A licensed blind vendor, acting as a volunteer mentor, is responsible to guide the trainee through the daily routine of operating a facility, noting the trainee's progress and setting goals with the trainee, and reporting to the SLA.
 - (B) A trainee's responsibilities to the mentor include following the mentor's instructions, acceptance of constructive criticisms, attendance at the vending facility a minimum of 30 hours per week to meet the on-the-job training requirements, unless excused for medical reasons or family

obligations of an emergency nature such as bereavement, and maintaining a professional demeanor. Eff ; am and com NOV 13 2010 (Auth: HRS § 102-14, 34 C.F.R. 395.11) (Imp. 34 C.F.R. section 395.11)

17-403-9 Transfer and promotion procedures for licensed vendors. a) Purpose. It is the purpose of this section to provide a fair, unbiased, and impartial process for selection, transfer, and promotion of licensed vendors.

(b) Vacancy announcements. The SLA shall prepare and mail a vacancy announcement to all licensed vendors by regular mail, place a telephone call to each vendor's number of record, and send the announcement electronically when a vendor has so requested, within 15 days of the date of receipt of notification that a facility will become available. A vacancy announcement shall contain the following:

- (1) The estimated starting date of the new operator;
- (2) A description of the facility with:
 - (A) An estimate of the number of customers served each day, including a statement of the number of customers that are building occupants, and an estimate of the number of other customers;
 - (B) Seating capacity (if any);
 - (C) The types of food services the facility provides (e.g., carry-out, vending, cafeteria, or other);
 - (D) Equipment;
 - (E) Items stocked for sale (including dollar amount of most recent inventory);
 - (F) Opening day cash recommendation;
 - (G) Information about how much space, if any, is available at the facility for inventory storage or if the operator must provide off-site storage and product transport;

- (H) The name, address of the facility, and the facility's telephone number;
- (I) The yearly gross receipts and net proceeds, with vending machine income stated separately, for as many of the three preceding fiscal years as records allow;
- (J) If a new facility, the department's study as required for the selection of suitable vending facility locations shall be included, along with projected daily gross receipts, and the number of expected employees in the building or number of other anticipated customers;
- (K) Reasons for fluctuation in proceeds, if known;
- (L) The days and hours of operation, including any limits to accessibility to the facility after hours and on weekends;
- (M) The number of vending facility employees presently employed, with notation that persons who are blind or otherwise disabled and are qualified for the job shall be given preference when hiring in any blind vending facility;
- (N) Available public transportation;
- (O) Projected changes in the facility (e.g., relocation and remodeling);
- (P) Any special training, physical requirements, and mobility skills required for the job;
- (Q) The location, type, and level of competition; and
- (R) A statement that the applicant has the right and is strongly recommended to visit the facility.

(c) Application deadline. A deadline for submission of applications shall be established, at least 15 calendar days from the date of the vacancy announcement. For an application to be considered by

the SLA, by the 15th day from the mailing date of the application, it must be:

- (1) hand delivered to the SLA;
- (2) mailed (verified by date of postmark);
- (3) submitted by telephone; or
- (4) submitted by email.

All applicants shall be contacted by telephone by the SLA to verify receipt of the application.

(d) Evaluation of applications. Applicants shall be evaluated according to a transfer and promotion policy promulgated with the active participation of the HSCBV as approved by the Commissioner of the Rehabilitation Services Administration of the Department of Education from time to time. The promotion and transfer policy shall have the following elements:

- (1) An evaluation panel, which shall include at least one licensed vendor appointed by the HSCBV;
- (2) Performance and objective factors consisting of whether or not the vendor has been the subject of verified complaints, has submitted timely profit and loss reports, has adhered to a RSRA debt repayment plan (if any), active participation with the HSCBV, participation in training, and on-site evaluations;
- (3) An interview by the evaluation panel; and
- (4) Longevity in the Hawai'i vending program.

In the event two vendors achieve the same score, the total number of years of service as a blind vendor in Hawai'i shall determine the selection. [Eff ; am and comp NOV 13 2010] (Auth: HRS § 102-14, 34 C.F.R. section 394.3) (Imp. 34 C.F.R. section 394.3)

§17-403-10 Appointment of an individual to a vending facility. (a) An individual selected to operate a vending facility shall be appointed for an indefinite period of time, provided that:

- (1) Any appointment shall be subject to suspension or termination for any reason set

forth in section 17-403-12, after the appointee is afforded an opportunity for a full evidentiary hearing.

- (2) Appointment to more than one vending facility shall not be made for an indefinite period of time, provided, however, that the SLA shall have discretion to determine whether any facility shall be combined with another facility to create one facility.

(b) An interim appointment may be temporarily made to two or more vending facilities until permanent appointments are made to the vending facilities.

(c) An individual who has completed training may be appointed to a vending facility if no licensee applies. If more than one individual has completed training, the appointment shall be offered to the individual first to have completed training. [Eff am and comp NOV 1 1990] (Auth: HRS § 102-14, 34 C.F.R. section 394.3) (Imp. 34 C.F.R. section 394.3)

§17-403-11 Issuance of licenses. A license to operate a vending facility on Federal or other property shall be issued after successful completion of a six month probationary appointment period to a vending facility. During the six month probationary period, the individual is not a licensed blind vendor. [Eff am and comp NOV 1 1990] (Auth: HRS § 102-14, 34 C.F.R. section 394.7) (Imp. 34 C.F.R. section 394.7)

§17-403-12 Suspension or termination of licenses. (a) Licenses shall be subject to

suspension or termination for cause, when the SLA:

- (1) Finds that the vending facility is not being operated in accordance with this chapter, the terms and conditions of the permit, contract, or written agreement, the terms and conditions of the agreement with the vendor, or applicable Federal, State, or local laws or regulations.

- (2) Finds that the vendor ceases to meet the definition of a blind person in 17-403-2;
- (3) Receives a written request for termination of a license from the vendor;
- (4) Finds that the vendor has abandoned the vending facility (without SLA consent, the vendor is neither operating nor managing the vending facility);
- (5) Learns of a vendor's death;
- (6) Learns that the vendor's illness prevents operation of the facility for more than thirty (30) consecutive days or totaling more than forty-five (45) days in any twelve-month period;
- (7) Finds willful or malicious destruction of, or failure to exercise necessary care for equipment furnished by or in the custody of the SLA;
- (8) Finds that the conduct of the vendor interferes with any aspect of the operation of the vending facility program including, but not limited to, theft, fraud, profanity, intoxication on duty, inexcusable neglect of duties as a vendor, conviction of a crime involving moral turpitude, or the making of false reports to the SLA;
- (9) Finds non-payment of debts by the vendor arising from the operation of the vending facility when such debts are more than 90 days past due;
- (10) Finds that the vendor fails to comply with the Civil Rights Act of 1964;
- (11) Finds that the vendor is not ensuring that the vending facility is open for business during customary business hours except for emergencies; or
- (12) Finds non-compliance with reasonable report requirements of the program.

(b) Notwithstanding paragraph (6) above, a vendor may request, due to a documented medical condition, that the SLA place a temporary operator in his or her facility. In such event, the SLA is

authorized, but not required to place a temporary operator in the facility, and the cost of the temporary operator shall be paid from the facility's gross sales. If the facility's gross sales are insufficient, the costs may be charged to the RSRA, at the discretion of the SLA.

(c) Except under the circumstances set out in (d) below, prior to suspension or termination of a vendor, the SLA shall:

- (1) Provide the vendor the opportunity for appropriate counseling and/or retraining;
- (2) Provide written notice of violation to the vendor, with a copy placed in the vendor's file;
- (3) The written notice of violation shall include the specific infringement of law or rule, and steps for correction; and
- (4) Afford the vendor a reasonable time period to correct the violation, and/or advise the vendor that repetition of the violation shall be grounds for suspension or termination.

(d) Summary suspension is authorized where a vendor is alleged to have created a threat to the continued operation of the facility, such as a danger to public health or safety, or an immediate threat of loss of SLA property or inventory. When a vendor is summarily suspended, paragraphs (c)(1) through (c)(4) above shall not apply. Prior to the summary suspension, the SLA shall notify the HSCBV chair. Within 10 days of a summary suspension, the SLA shall return the vendor to the facility or initiate formal termination or suspension.

(e) A decision to suspend or terminate a vendor for cause shall be made only after the vendor is afforded an opportunity for a full evidentiary hearing.

- (1) A vendor who disagrees with the suspension or termination decision may request a full evidentiary hearing.
- (2) A request for a full evidentiary hearing must be in writing and must be received by the SLA

within 15 days of the date of suspension or termination.

- (3) A vendor who submits a timely request for a full evidentiary hearing shall operate the facility, pending the result of the full evidentiary hearing.
- (4) If the hearing officer affirms the SLA's decision to suspend or terminate the vendor, the SLA shall operate the vending facility during the period of suspension (or, in the case of termination, until a successor vendor is appointed), shall pay all facility obligations, and shall pay the net proceeds of the vending facility for the period of suspension (or appointment of a successor vendor) to the RSRA.

(f) Suspension of a vendor shall be for a definite period of time, not to exceed 10 days, and shall require 15 days' prior written notice, except in the case of summary suspension.

(g) Termination of a vendor shall require 15 days' prior written notice. [Effective NOV 13 2010 am and comp] (Auth: HRS § 102-14, 34 C.F.R. § 395.3, 395.7) (Imp. 34 C.F.R. § 395.3, 395.7)

§17-403-13 Right to administrative review. (a) Any blind person who applies for or is accepted for vending evaluation or training, or both, who is dissatisfied with any decision or action taken by the SLA in the provision of vending evaluation or training services, or the selection of blind persons to operate a vending facility, may request an administrative review of such decision or action, by contacting the Administrator, Services for the Blind Branch.

(b) Applicants to the vending facilities program shall be informed of this right at time of application and trainees shall be informed at commencement of training.

(c) Requests for administrative review may be made orally or in writing to the supervisor or administrator of the vending evaluation or training

program. [Eff. NOV 13 2014] (Auth: HRS § 102-14) (Imp. 20 U.S.C. §§ 107d-1, 107d-2, 34 C.F.R. section 395.13)

\$17-403-14 Administrative review. (a)

Administrative review shall be an informal procedure for addressing the dissatisfaction of blind persons with any decisions or actions taken by the SLA in implementing vending evaluation and training services or the selection of blind persons for appointment to vending facilities, or for transfers and promotions. For a licensed vendor, administrative review is optional, and is not a prerequisite to a full evidentiary hearing.

(b) The administrative review shall be conducted by supervisory or administrative staff of the division at the request of the blind person.

(c) The division administrator shall make the final decision if the blind person is not satisfied with the decision of other supervisory or administrative staff, or both.

(d) The administrative review shall be held during division work hours and located at a branch or section office or at other mutually-agreed-upon time and place.

(e) Documentation of written or oral requests and actions and decisions resulting from the request and administrative review shall be entered in the vending facility program's record of services for the individual.

(f) Interpreter or reader services shall be arranged, upon request. [Eff. NOV 13 2014] (Auth: HRS § 102-14) (Imp. HRS § 346-14(11))

\$17-403-15 A licensed vendor's right to a full evidentiary hearing. (a) Upon timely receipt of a written request, a full evidentiary hearing shall be conducted in accordance with 34 C.F.R. section 395.13, notwithstanding any State statutes to the contrary.

(b) Any blind licensee who is dissatisfied with any action arising from the operation or administration of the vending facilities program may submit to the SLA a request for hearing.

- (1) The hearing request must be made within 90 calendar days of a decision or action taken by the SLA, with the exception of a hearing request made by a vendor who has been suspended or terminated. If the 90th day falls on a weekend or holiday, the 90th day shall be the working day following the weekend or holiday.
- (2) The date of request is the date the SLA receives the signed request for hearing from the vendor or, as appropriate, vendor's representative.
- (3) The request shall be in writing to the division administrator of the SLA. The vendor or, as appropriate, vendor's representative, may submit the request using the SLA's preprinted form or other writing. The request for hearing must contain the disputed decision or action taken by the SLA, the date of the disputed decision or action, and the SLA staff involved.
- (4) The request for hearing shall be acknowledged in writing by the division administrator within 15 calendar days of its receipt by the division.
- (5) A copy of the request for hearing shall be filed in the vending facility program's record of services for the vendor.
- (6) The full evidentiary hearing must be held within 30 calendar days of the request for hearing. The evidentiary hearing may be extended:
 - (A) By mutual agreement;
 - (B) For good cause; or
 - (C) For a period not to exceed 30 days from the date of administrative review if a vendor renews the request for a full evidentiary hearing.

(c) The full evidentiary hearing shall be conducted by a qualified and impartial hearing officer who has no involvement with the SLA's administration or operation of the vending facility program and who has received training from the department of human services with respect to the performance of official duties.

(d) Within 5 days from the evidentiary hearing request, the vendor or, as appropriate, vendor's representative, shall have the right and responsibility to select a hearing officer from a list of qualified and impartial hearing officers maintained by the SLA. If no hearing officer is selected by the vendor, the SLA shall appoint a hearing officer from the list of hearing officers.

(e) The vendor or, as appropriate, vendor's representative, shall be provided the opportunity to submit evidence and other information that supports the vendor's position during the hearing.

(f) The vendor or, as appropriate, vendor's representative, shall be allowed to be represented during the hearing, by counsel or other advocate selected by the vendor or, as appropriate, vendor's representative, at the vendor's expense.

(g) Interpreter or reader services shall be arranged by the SLA for the vendor or, if appropriate, vendor's representative.

(h) The SLA may pay for transportation of the vendor to and from the place of the hearing if the hearing is held on another island than the vendor's place of residence. The SLA is not required to pay for any costs for the vendor's representative.

(i) A written position statement explaining the reasons for the SLA's decision or action taken, and citing the authority or the specific sections of the federal or State rules or regulations on which the agency's decision was based, shall be submitted to the hearing officer and the vendor or representative in advance of the hearing. A copy of this statement shall be filed in the SLA's record of services for the vendor. [Eff. NOV 13 2010 and comp] (Auth: HRS §

102-14) (Imp.20 U.S.C. §§ 107d-1, 107d-2, 34 C.F.R. section 395.13)

§§17-403-16 to 17-403-18 (Reserved)

Subchapter 3 Vending Facility Selection, Permits, and
Operating Agreements

§17-403-19 Selection of vending facility
locations in state, city and county buildings. (a)

Vending facilities may be situated in public buildings, including buildings leased by a state, city or county. The permit or lease shall be in the name of the SLA and shall not be transferable except by the SLA.

(b) Any building that an authority undertakes to acquire by ownership, lease, or to otherwise occupy, in whole or in part, shall include a satisfactory site for the location and operation of a vending facility. This includes any building that is to be constructed, or substantially altered or renovated.

- (1) Each authority shall provide the SLA written notice by certified mail, return receipt requested, of its intention to acquire or otherwise occupy a building. The written notice shall be provided as early as practicable, but no later than 90 days before such intended action.
- (2) The SLA shall be afforded the opportunity to select the location and type of vending facility to be operated by a licensee prior to the completion of the final space layout of the building.
- (3) The SLA shall consult with the authority and with the chair of the HSCBV, or the chair's designee, and, within 30 days following receipt of the notice to occupy, will determine whether the site is satisfactory for a vending facility. A vending facility is not required to be established where the SLA determines that a facility is not feasible.

- (4) An arbitration board of three persons shall hear appeals as provided in subsection (5) of this section.
 - (A) The arbitration board will resolve the issue(s) submitted for arbitration and determine if the authority violated HRS 102-14 or these regulations.
 - (B) The arbitration board shall consist of one individual designated by the HSCBV chair or the chair's designee who shall serve as chair, one person designated by the authority over which a dispute arises, and a third person who is not an employee of the authority selected by the two.
 - (C) If either party fails to promptly agree to a third person, the SLA shall appoint a hearing officer from the list of qualified and impartial hearing officers maintained by the SLA.
- (5) If, in the opinion of the SLA, any authority fails to comply with HRS 102-14, the SLA shall appeal the authority's action to the arbitration board.
 - (A) The arbitration board, shall, within 30 days' written notice of appeal, conduct a hearing and render its decision. The time for hearing may only be extended by mutual consent of the SLA and the authority.
 - (B) The decision of the arbitration board shall be in writing and shall be final and binding.
 - (C) If the arbitration board determines that the acts or practices of any authority violate the priority given to blind or visually handicapped persons to establish and/or operate vending facilities, the head of the affected authority shall promptly cause such acts or practices to be terminated, and shall take such other action as may be

necessary to carry out the decision of the arbitration board. Notwithstanding the above, the SLA shall have authority to proceed with all remedies authorized by law when a county or city fails to comply with HRS 102-14.

- (6) Except where caused by the negligence of the SLA or a licensee, no charge may be made to the SLA or a licensee for rent, utilities, maintenance and/or repair of building structures in and adjacent to vending facility areas, except as authorized by agreement entered into prior to January 1, 2010.

(c) The provisions of this section shall not apply to buildings exempted under section 102-14(g), HRS.

(d) The SLA shall prepare a written report of a proposed suitable location and transmit the written report to the HSCBV chair no less than 15 days prior to the date a permit or lease for a vending facility is entered into by the licensing agency. Factors to be considered in the written report include the total number of employees in a building and the number of persons having easy access to a vending facility on a daily basis.

(e) The SLA shall prepare a written report with estimated expenditure of funds for equipment and initial stock of newly established or substantially remodeled vending facilities and transmit the written report to the HSCBV chair at least 15 days prior to the proposed expenditure of such funds. [Eff am and comp NOV 13 2010 (Auth: HRS § 102-14) (Imp. HRS § 102-14, 347-12.5)]

§17-403-20 Selection of vending facility locations on federal property. (a) Vending facility selection shall be in accordance with the federal regulations at 34 C.F.R. sections 395.30 and 395.31.

(b) Planned or existing cafeterias on federal property shall be established in accordance with the

federal regulations at 34 C.F.R. section 395.33. [Eff
am and comp NOV 13 2010] (Auth: HRS § 102-14) (Imp. 20
U.S.C. §§ 107a, 34 C.F.R. sections 395.16, 395.30,
395.33)

\$17-403-21 Application and issuance of permits.

- (a) Before establishing a vending facility, the SLA shall submit a permit to the property managing department, agency, or instrumentality that has control of the property and/or building.
- (b) The permit shall be issued for an indefinite period and shall contain, but not be limited to:
 - (1) Identification of the specific type, location, and size of the vending facility;
 - (2) Enumeration of the types or articles and services to be vended;
 - (3) A listing of the vending facility's fixtures and equipment with responsibilities of each party with respect thereto;
 - (4) Identification, if any, of vending machines located within the vending facility or elsewhere on the property and the extent of the vendor and program participation in the income of such machines;
 - (5) Bases for which the permit may be suspended or terminated;
 - (6) An enumeration of all other areas of responsibility for the property;
 - (7) Such insurance as the property and/or building managing department, agency, or instrumentality may reasonably require;
- (c) No party may change the terms of the permit without the written authority of the property and/or building managing department, agency or instrumentality and the SLA.
- (d) The operation of a cafeteria by a blind vendor on federal property shall be covered by a contractual agreement and not by a permit, pursuant to the federal regulations at 34 C.F.R. section 395.33. [Eff NOV 13 2010 and comp] (Auth: HRS § 102-14)

(Imp. 34 C.F.R. sections 395.16, 395.34, 395.35, HRS § 102-14)

§17-403-22 Duties and responsibilities of vendors. A vendor shall:

- (1) Perform faithfully the necessary duties in connection with the operation of the facility in accordance with the department's rules, the terms of the permit, and the operating agreement.
 - (2) Act in the best interest of the vending facilities program as a whole.
 - (3) Cooperate with officials responsible for the building and/or property in which the vending facility is located, and with duly authorized representatives of the department in connection with their official program responsibilities.
 - (4) Operate the vending facility in accordance with all applicable health laws and rules.
 - (5) Furnish such reports as are required by law and as the SLA and the HSCBV may require from time to time.
 - (6) Make available to the SLA the facility's financial records when necessary to ensure that the facility is adequately profitable.
 - (7) Take reasonable care of equipment in the assigned vending facility and carry out routine day-do-day maintenance procedures.
- [Eff. 11/13/2010 am and comp] (Auth: HRS § 102-14) (Imp. 34 C.F.R. section 395.3, HRS § 102-14)

§17-403-23 Provision of management services to vendors. The SLA shall provide the blind vendors supervision and assistance as may be necessary to insure that the operation of each vending facility is adequately profitable. [Eff. 11/13/2010 am and comp] (Auth: HRS § 102-14) (Imp. 34 C.F.R. section 395.8, HRS § 102-14, 347-12.5)

§17-403-24 Responsibility for equipment and initial stocks. Responsibilities for equipment and initial stocks of vending facilities are vested as follows:

- (1) The SLA shall furnish each vending facility with adequate suitable equipment and adequate initial stock of merchandise necessary for the establishment and operation of the facility.
- (2) The SLA shall maintain (or cause to be maintained) all vending facilities in good repair and in an attractive condition and shall replace (or cause to be replaced) worn out and obsolete equipment as required to insure the continued successful operation of the vending facility.
- (3) The right, title to, and interest in vending facility equipment and initial stock, operating capital, and supplies provided in the establishment of a vending facility in a particular location is vested in the SLA, except as provided in subsection (4).
 - (A) In the event the vendor dies, or for any other reason, ceases to be a licensed operator or transfers to another vending facility, a closing inventory shall be taken of all equipment and stocks and supplies on hand prior to the SLA's release of the location to a succeeding vendor.
 - (B) The fair market value of missing equipment, or damage to equipment in excess of normal operational wear and tear, shall be paid to the SLA by the outgoing vendor or vendor's estate.
 - (C) If the closing inventory shows that the value of stocks and supplies on hand is less than the original investment for initial stocks, operating capital, and supplies, the difference shall be paid to the SLA by the outgoing vendor or vendor's estate.

- (D) If the closing inventory shows that the value of stocks and supplies on hand exceeds the original investment, the difference shall be paid to the outgoing vendor or vendor's estate by the SLA.
- (4) Vending facility equipment may be owned or leased by a vendor.
 - (A) The SLA and the vendor shall not enter into any purchase agreement or lease holding the SLA liable for equipment owned or leased by a vendor.
 - (B) The vendor and the SLA shall consult with respect to purchase of vending facility equipment.
 - (C) Maintenance and repair of vendor owned and leased equipment shall be the responsibility of the vendor. If the vendor fails to maintain and repair the equipment, the SLA shall maintain such equipment in accordance with 34 C.F.R. 395.10, with the vendor reimbursing the agency for the cost thereof.
 - (D) The SLA shall have the authority to dispose of equipment when the cost of repair of equipment exceeds the value of the equipment.
 - (E) Vendors owning equipment shall provide the SLA with a list of vendor-owned equipment.
 - (F) If a vendor dies or ceases to be a licensed vendor, or is reassigned to a different vending facility, the SLA shall have a 30 day right of first refusal to purchase the equipment at fair market value. If the agency does not agree in writing to the purchase within the 30 day period, the vendor or the vendor's estate shall remove vendor owned or leased equipment within 5 working days, or as otherwise agreed, in writing. If a vendor fails to do so,

the SLA is authorized to sell the equipment, purchase the equipment from the vendor, or otherwise dispose of the equipment in a reasonable manner. If the SLA purchases the equipment, the fair market value shall be paid to the vendor or the vendor's estate. Any cost of disposal shall be paid to the SLA by the vendor or the vendor's estate. [Eff ; am and comp NOV 13 2010] (Auth: HRS § 102-14) (Imp. 34 C.F.R. sections 395.4, 395.10, HRS § 102-14)

\$17-403-25 Collection and distribution of vending machine income. (a) Vending machine income on state, city and county property shall accrue to the state licensing agency if no vending facility is located in a building. Where a vending facility is located in a building, the assigned operator shall receive the income from the vending machines which are in direct competition with the facility.

(b) Vending machine income on federal property shall be collected and distributed in accordance with the federal regulations at 34 C.F.R. sections 395.8 and 395.32.

(c) Vending machine income from vending machines in State, city or county buildings retained by the State licensing agency shall be used by the SLA for the purposes enumerated in section 347-12.5, HRS.

\$17-403-26 Execution of operating agreements.

(a) All vendors shall be required to enter into and execute the "Statement of Relationship and Operating Agreement" (operating agreement) with the SLA.

(b) All vendors shall strictly conform to and abide by the terms, conditions, and provisions of the operating agreement which include:

- (1) The SLA's responsibilities;
- (2) The vendor's responsibilities;

- (3) A statement that the vendor shall make every feasible effort to ensure that the facility remains open during any period of absence, and shall seek the SLA's assistance, if necessary, to do so;
- (4) General provisions pertaining to suppliers, merchandise, vacations, absence due to illness, settlement of accounts, liability insurance, employment of assistants; and
- (5) The intent of the agreement and conditions for termination and suspension.

(c) The SLA shall furnish the vendor a copy of its rules and a description of the arrangements for providing services to the vendor. The SLA shall take adequate steps to insure that each vendor understands the provisions of such documents and the provisions of the permit and any agreements under which the vendor operates, as evidenced by the vendor's signed statement.

(d) Vending facility receipts shall be distributed in the following manner:

- (1) Each operator shall receive the proceeds from the facility, including the income from the vending machines which are in direct competition with the facility.
- (2) For facilities located on Federal property, the provisions of the Act will apply. [Effective NOV 13 2010 am and comp] (Auth: HRS § 102-14) (Imp. 34 C.F.R. section 395.3)

§§17-403-27 to 17-403-29 (Reserved)

Subchapter 4 - State Committee, Retirement and Health Insurance, Visually Impaired Vendors

§17-403-30 State committee of blind vendors.

- (a) A State committee of blind vendors (the committee

or HSCBV) shall represent the vendors and engage in active participation with the SLA.

(b) The committee shall be comprised of a total of nine blind vendors, which, to the extent possible, shall be fully representative of all blind vendors in the State program on the basis of ensuring proportional representation of blind vendors on Federal property and blind vendors on other property.

(c) Membership on the committee shall be determined by elections provided by the SLA during the month of June of each odd-numbered calendar year.

- (1) Ballots shall be mailed to all blind vendors at the vendor's address listed with the SLA no later than the second Friday in May of each odd-numbered year. Before mailing, all ballots providing for voting by all licensed blind vendors shall be submitted to the HSCBV chair or vice chair.
- (2) All licensed blind vendors shall be provided the opportunity to seek membership on the committee. By the third Friday in April of each year, the SLA shall advise all eligible vendors that their name will be placed on the ballot unless the vendor declines to seek membership on the HSCBV.
- (3) Participation shall not be conditioned upon the payment of dues or any other fees.
- (4) A candidate shall be licensed and operating a vending facility as of the first day in May immediately preceding each election.
- (5) Elections shall take place at a statewide meeting of all licensed vendors to be held in June of each odd-numbered year. Absentee votes shall be accepted by the SLA.
- (6) If a vendor is elected as a representative of one of the categories listed in paragraph (b) herein, and subsequently relocates to a facility in a different category, the vendor shall be authorized to continue in office until the expiration of his or her term.

(d) The committee shall have four officers: a chairperson, a vice chairperson, a secretary, and a treasurer.

(1) No member shall hold more than one office at the same time.

(2) The membership shall elect officers at its first meeting after each election of committee members.

(e) Membership in the committee shall be terminated by a majority vote of the membership:

(1) When a committee member ceases to meet the definition of a blind person found in section 17-403-2; or

(2) When a committee member is absent from three consecutive committee meetings without good cause.

(f) Interim vacancies shall be filled for the remaining term of a vacancy by a majority vote of the committee membership.

(g) To insure active participation in the formulation of policy, the committee shall have subcommittees.

(1) Subcommittees shall include, but not be limited to:

(A) Grievance;

(B) Promotion and transfer;

(C) Training and re-training; and

(D) Legislative.

(2) The chairperson may appoint members to chair subcommittees with the concurrence of the majority of the committee.

(3) The chairperson of a subcommittee shall be a committee member. Other members may be selected from those licensed vendors who are not on the committee.

(4) Each subcommittee shall contain no fewer than three persons and no more than five persons.

(h) The committee shall hold meetings at least quarterly, at the SLA's facility.

(1) Between regular meetings of the committee, it shall carry on its functions through

subcommittees or individual members designated by it for that purpose.

- (2) Special meetings may be called by:
 - (A) The chairperson; or
 - (B) The SLA;
 - (C) A majority of the committee; or
 - (D) A majority of blind vendors in the State.

- (3) Subcommittee meetings may be called as required by the chairperson of the subcommittee.

(i) The HSCBV, jointly with the SLA, shall sponsor an annual meeting in June of each year. At the annual meeting, vendors shall:

- (1) Vote on the amount of benefits to be paid pursuant to 34 C.F.R. section 395.8 for the fiscal year beginning July 1 following the June meeting.
 - (A) Medical benefits shall be paid at the beginning of the fiscal year; and
 - (B) Retirement benefits shall be paid at the end of the fiscal year.
- (2) Elect representatives in each odd-numbered calendar year to the HSCBV.
- (3) Be provided training by the SLA in management skills, food services and/or sanitation laws, and business systems.

(j) The chairperson, or chairperson's designee, shall serve as an *ex officio* member of civil service interview panels for the hiring of professional program personnel for the vending facility program.

(k) Oral testimony before committees or subcommittees may be limited to three minutes for each speaker on each agenda item.

(l) By-laws for the operation of the committee shall be adopted by a majority vote of blind vendors in the State. The by-laws shall include all pertinent requirements outlined in this section.

(m) The committee shall have the opportunity to initiate matters for consideration by the committee and the SLA, and to make meaningful contributions to

the State's vending facilities program with its views and positions taken into serious account by the SLA.

(n) The SLA shall be responsible for establishing a communications procedure under which the committee automatically will receive advance written notice on matters within its purview that are being considered for decision, and under which appropriate subcommittees or individual members will receive written notices of invitations to attend important discussion and decision-making meetings in areas of the committee's interest.

(o) The SLA has the ultimate responsibility for the administration of the State vending facilities program; however, if the SLA does not adopt the views and positions of the committee, the agency shall notify the committee in writing of the decision reached or the action taken and the reasons.

[Eff. NOV 13 2010 and comp] (Auth: HRS § 102-14) (Imp. 20 U.S.C. § 107b-1, 34 C.F.R. section 395.14)

§ 17-403-31 Retirement and Health Insurance Benefits. A vendors' eligibility for retirement benefits shall be established based on operation of a vending facility as of June 1 of each year. Retirement benefits are paid for the ensuing year. A vendor shall be eligible for health insurance benefits effective the date of licensure. When the SLA has paid health insurance benefits on behalf of a vendor, then the amount paid in excess of the allowed health insurance benefits shall be deducted from the amount to be paid for retirement and/or paid by the vendor to the SLA on a quarterly basis. [Eff. NOV 13 2010 and comp] (Auth: HRS § 102-14) (Imp. 20 U.S.C. § 107d-3, 34 C.F.R. sections 395.8, 395.32)

§17-403-32 Vendor access to program and financial data. (a) Each blind vendor shall be provided access to all program and financial data of the State licensing agency relevant to the operation

of the State vending facilities program, including but not limited to quarterly and annual financial reports, provided that information authorized to be withheld by chapter 92F, Hawai'i Revised Statutes, or required to be withheld by federal and state laws shall not be disclosed.

(b) Insofar as practicable, data shall be made available in the vendor's preferred format.

(c) At the request of a vendor, the State licensing agency shall arrange a mutually convenient time to assist in the interpretation of the data.

[Eff am and comp] (Auth: HRS § 102-14)
(Imp. 20 U.S.C. § 107b-1, 34 C.F.R. section 395.12)

§17-403-33 Participation of individuals who are visually impaired. (a) Persons who are visually impaired shall be afforded the same services and shall be allowed to participate in the program on a space-available basis after the needs of persons who are blind have been met, with the following exceptions:

- (1) They shall not be assigned to vending facilities on federal property.
- (2) They shall not be included in any vendors' benefits package.
- (3) They shall not have representation in the HSCBV.
- (4) No RSRA funds may be expended for maintenance of equipment, management services, or any other purposes.
- (5) They shall not have the hearing rights set out in section 15 hereof.

(b) Assignment of visually impaired individuals to vending facilities shall be on a month-to-month basis." [Eff **NOV 13 2010** am and comp] (Auth: HRS § 102-14) (Imp. HRS § 102-14)

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